

Memorandum on
Suggestion of MootnessPD-0469-19
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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DEANA WILLIAMSON
CLERK**TO THE HONORABLE COURT:**FILED
COURT OF CRIMINAL APPEALS
6/1/2022
DEANA WILLIAMSON, CLERK

On May 5, 2022, Mr. Sanders filed a *Suggestion of Mootness* because the State had, while this habeas corpus case was under submission in this Court, dismissed the underlying case without notifying this Court or Mr. Sanders.

The State, through her appellate counsel Jeffrey Ford, is now arguing in the trial court in Mr. Sanders's underlying case that that court lacked jurisdiction to dismiss the underlying matter on the State's motion because of the pendency of this habeas corpus case on appeal. Please see the May 27, 2022 letter from Russell Gunter, Mr. Sanders's trial counsel, to Mark Bennett, attached as Exhibit A.

If the State is correct, then the underlying case is still pending in the trial court, the habeas appeal is not moot, and Mr. Sanders will not need to argue about mootness in his cert petition.

If the State is incorrect, then the underlying case has been dismissed and this habeas appeal is moot. *Ex parte Thompson*, 685 S.W.2d 338 (Tex. Crim. App. 1985). Mr. Sanders will not need to file a cert petition.

THE ISSUE IS IMPORTANT.

The question of whether a trial court has jurisdiction to act in an underlying case when a habeas appeal is pending is an important one

generally: if a trial court has such jurisdiction, then it may proceed to trial despite the pendency of an appeal of denial of habeas relief challenging the basis for its jurisdiction; or it may dismiss a prosecution while an appeal is pending, mooted an issue on appeal.

The answer to the question will affect how Texas lawyers raise statutory-unconstitutionality issues before trial—if the trial court has jurisdiction to try the case despite the pendency of a habeas appeal, lawyers might put their efforts into motions to quash instead of habeas.

Here, particularly, the issue is important because if the dismissal of Mr. Sanders's case was effective, he need not litigate this case further; this court need not rehear this case; and the opinion should be withdrawn as improvidently issued.

THE ISSUE IS DIFFICULT TO BRING TO THIS COURT.

The issue is also one that is likely to recur in trial courts, but difficult to bring to this Court. Ordinarily it would require either that:

- A trial court express an intent to proceed to trial while the appeal was pending in the Court of Appeals,
- A party seek a writ of prohibition in the Court of Appeals (the Court with statutory jurisdiction to enforce its own jurisdiction by writ of prohibition, Tex. Govt. Code § 22.221(a)),
- The Court of Appeals either grant or deny relief or decline to act, and
- The party aggrieved thereby seek de novo review in this Court.

Or that:

- A trial court express an intent to proceed to trial while the appeal is pending in this Court, and
- The party aggrieved thereby seek a writ of prohibition in this Court.

Parties have seldom sought extraordinary writ relief from trial courts seeking to try them while their habeas appeals were pending. There are two unpublished intermediate court of appeals opinions holding that the trial court has jurisdiction to act in the underlying case despite the pendency of a habeas case. In these cases, the aggrieved parties did not seek further review. *In re Poulis*, No. 03-20-00142-CV, 2020 WL 4726758 (Tex. App.—Austin Aug. 12, 2020, no pet.); *In re Victorick*, No. 09-13-00550-CR, 2013 WL 6885130 (Tex. App.—Beaumont Dec. 30, 2013, no pet.) (*mem. op.*; *not designated for publication*).

COUNSEL IN THIS CASE ARE ALREADY UP TO SPEED ON THE ISSUE.

This issue was raised last month in the Amarillo Court of Appeals in the writ-of-prohibition case of *Ex parte Rodger Claycomb*, No. 07-22-00078-CR. There the State—represented by Mr. Ford—took a position contrary to that which it takes here:

The issue before the Court is whether there is anything requiring the Court to grant a stay of the trial proceedings pending resolution of Appellant’s appeal challenging the denial of the pretrial application

for writ of habeas corpus. Two different appellate opinions have answered that question in the resounding negative: *In re Victorick* and *In re Poulis*.

Please see *State's Response* in Cause No. 07-22-00078-CR, attached as Exhibit B, at 3.

Mr. Claycomb—represented by Haygood and Bennett, in fact, counsel in this case—briefed the issue as well, arguing that under article 11.32 of the Texas Code of Criminal Procedure and this Court's *Ex parte Kearby*, 35 Tex. Crim. 634, 641, 34 S.W. 962, 963 (1896), once the writ has issued, the court considering the habeas has sole jurisdiction over the accused. Please see *Appendix to Motion for Stay or Writ of Prohibition* (should have been *Motion for stay or Writ of Prohibition*) in Cause No. 07-22-00078-CR, attached as Exhibit C.

The Amarillo Court has not ruled on Mr. Claycomb's petition for writ of prohibition; instead that court has granted an emergency stay to afford it sufficient time to review the merits of the petition. *Ex parte Claycomb*, No. 07-22-00078-CR, 2022 WL 1012755, at *1 (Tex. App.—Amarillo Apr. 1, 2022, no pet. h.).¹

¹ The Amarillo Court's action illustrates the difficulty in bringing this issue to this Court: that court has stayed proceedings in the trial court, resolving the immediate issue, without ruling on whether the trial court had jurisdiction to proceed to trial.

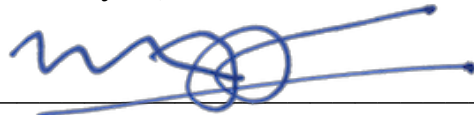
CONCLUSION

In the interest of justice, because this is an important issue that is ripe in this Court, please address the question of mootness by ascertaining the facts, and ordering that the parties state, brief and argue their positions.

CERTIFICATE OF SERVICE

A copy of this Memorandum will be delivered to the attorneys for the State via email when it is filed through the electronic-filing system.

Thank you,



Mark Bennett

SBN 00792970

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Appendix to Memorandum on
Suggestion of Mootness

May 27, 2022 letter from Russell Gunter, Mr. Sanders's trial counsel, to Mark Bennett.....	Tab A
Exhibit B: <i>State's Response</i> in Cause No. 07-22-00078-CR.	Tab B
Exhibit C: <i>Appendix to Motion for Stay or Writ of Prohibition</i> in Cause No. 07-22-00078-CR	Tab C

Tab A

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May 27, 2022

Mr. Mark Bennett
917 Franklin Street, Fourth Floor
Houston, Texas 77002

Re: *Ex Parte Nathan Sanders*
No. PD-0469-19

Dear Mr. Bennett:

On March 24, 2022, while this matter was pending before the Texas Court of Criminal Appeals, the Lubbock County Criminal District Attorney, by and through Assistant Criminal District Attorney Harrison Chase Stewart, filed a Motion to Dismiss in the Interest of Justice in the County Court at Law Number One of Lubbock County, Texas. The Court signed the Order to Dismiss on that same day.

On April 6, 2022, the Texas Court of Criminal Appeals delivered its opinion affirming the decision of the Court of Appeals.

On May 27, 2022, the County Court at Law Number One of Lubbock County, Texas, requested a meeting with the parties to discuss the status of this matter, as filings had occurred after the effective date of the dismissal. During this meeting, Jeffrey Ford, Assistant Lubbock County Criminal District Attorney, stated that he believed that the trial court lacked jurisdiction to grant the Motion to Dismiss filed on March 24, 2022. He further stated that the trial court lacked jurisdiction to do anything in this matter until such time as mandate issues. As such, it was and is the contention of the State of Texas that this matter was not dismissed and remains pending before the Court of Criminal Appeals.

Thank you for your time and consideration in this matter. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

/s/ Rusty Gunter
RUSSELL I. GUNTER, II
Attorney at Law

Tab B

**IN THE SEVENTH COURT OF APPEALS
FOR THE STATE OF TEXAS**

EX PARTE

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§
§

FILED IN
7th COURT OF APPEALS
AMARILLO, TEXAS
3/17/2022 4:32:10 PM
NO. 07-20-00338-CR
BOBBY RAMIREZ
Clerk

RODGER CLAYCOMB

**STATE'S RESPONSE TO APPELLANT'S
APPENDIX TO MOTION FOR STAY OR
WRIT OF PROHIBITION**

TO THE HONORABLE SEVENTH COURT OF APPEALS:

The State of Texas, Appellee, hereby files this Response to Appellant's Appendix to Motion for Stay or Writ of Prohibition, and shows:

I.

Appellant was charged by indictment with the offense of Online Impersonation under Section 33.07(a)(1) of the Texas Penal Code on July 10, 2018, in Cause No. 2018-415,337. (Clerk's Record "CR" p. 14). Appellant filed an Application for Habeas Corpus and Brief in Support in Cause No. 2019-001,978 on July 1, 2019, alleging that Section 33.07 of the Texas Penal Code is facially overbroad. (CR pp. 5-13). The trial court denied the pretrial application for writ of habeas corpus via written order on August 5, 2020. (CR p. 18).

Appellant filed a notice of appeal with the trial court on August 25, 2020. After both sides submitted briefing with the Court, the case was submitted on oral argument on July 14, 2021, in Case No. 07-20-00238-CR. The case remains pending with the Court at this time.

Appellant's case was placed on the trial docket by the trial court in March of 2022, with trial scheduled to commence on April 4, 2022. (Tab 3, p. 1). Appellant filed a Motion for Continuance on March 7, 2022, requesting that the trial be reset "due to the pending appeal on Defendant's Application for Writ of Habeas Corpus which challenges the validity of the charging instrument." (Tab 1, p. 1). Following a hearing on the motion on March 10, 2022, Judge Douglas Freitag, the presiding judge of the 140th District Court, denied the Motion for Continuance. (Tab 2).

Appellant has now filed an Appendix to Motion for Stay or Writ of Prohibition with the Court seeking to challenge the trial court's decision to deny the Motion for Continuance and keeping the case on the trial docket for April 4, 2022. The State hereby files this Response to Appendix to Motion for Stay or Writ of Prohibition responding to Appellant's request for a stay of the underlying criminal prosecution proceedings pending resolution of the habeas appeal.

II.

No stay was ever issued in the original case prior to the trial court's denial of the pretrial application for writ of habeas corpus being taken up on appeal or at any time since. The issue before the Court is whether there is anything requiring the Court to grant a stay of the trial proceedings pending resolution of Appellant's appeal challenging the denial of the pretrial application for writ of habeas corpus. Two different appellate opinions have answered that question in the resounding negative: *In re Victorick* and *In re Poulis*.

In *In re Victorick*, the Ninth Court of Appeals addressed the defendant's request for emergency stay and petition for writ of mandamus and writ of prohibition, which sought to prevent the trial court from proceeding to trial pending the appeal of the denial of the defendant's petition for writ of habeas corpus challenging the constitutionality of the Online Solicitation statute. The court denied the request for emergency stay and petition for writ of mandamus and writ of prohibition. *See In re Victorick*, No. 09-13-00550-CR, 2013 WL 6885130 (Tex. App.—Beaumont Dec. 30, 2013, no pet.) (*mem. op.*; *not designated for publication*). The court noted that “[a] habeas corpus proceeding is appealable precisely because it is an independent original proceeding that is not part of the criminal case”

and that “Victorick’s habeas appeal is not an interlocutory appeal from the substantive cause arising out of the indictment.” *Id.* at *2. The court also noted that “[h]aving the right to an appeal and having a right to prohibit the trial court from proceeding with the trial before the appeal is decided are two different things.” *Id.* Furthermore, the court also noted that “if the trial court adjudicates guilt, the appellate court does not lose jurisdiction over the pretrial habeas appeal that challenges the facial constitutionality of the statute under which the appellant was charged.” *Id.* Based on the foregoing, the court concluded that Victorick failed to establish that the trial court’s denial of his motion for stay was a non-discretionary decision under unequivocal, well-settled, and clearly controlling legal principles, or that he did not have an adequate remedy on appeal. *Id.* at *3.

In *In re Poulis*, the Third Court of Appeals addressed the defendant’s request for a petition for writ of mandamus asking the appellate court to vacate the trial court’s judgments of conviction and issue a writ of mandamus ordering the trial court to release the relator due to an alleged lack of jurisdiction to have the trial while the appeal of the pretrial application for writ of habeas corpus was pending. The court denied the petition for writ of mandamus. *In re Poulis*, No. 03-20-00142-CV, 2020 WL 4726758 (Tex. App.—Austin Aug. 12, 2020, no pet.) (*mem. op.*; *not designated for*

publication). Like *In re Victorick*, the court stated that “a pretrial habeas proceeding is a separate criminal action independent of the underlying criminal prosecution proceeding.” *In re Poulis*, 2020 WL 4726758 at *1. On that basis, the court concluded that “because the pretrial habeas proceeding is a separate criminal action, the trial proceedings in the prosecution of the indicted offenses were not suspended by the pending appeal in the habeas proceeding.” *Id.*

III.

Appellant has filed an Appendix to Motion for Stay or Writ of Prohibition with the Court seeking an order “order[ing] the trial court not to proceed to trial in this case before the habeas appeal is final.” (Motion at *1). Appellant has provided the following reasons why trial should not be permitted to commence in the underlying criminal prosecution proceeding on April 4, 2022: (1) the Court should prohibit trial to enforce its jurisdiction; (2) the Court must prohibit trial to preserve Appellant’s cognizable rights and due to the jurisdictional nature of Article 11.32 of the Code of Criminal Procedure; (3) policy dictates a stay of the proceedings. (Motion at *1–13). For all the reasons shown below, however, a motion for stay is not required to be granted, whether on jurisdictional grounds, on Article 11.32 grounds, or on policy grounds.

III(A).

Appellant's first argument is that the Court should prohibit trial to enforce its jurisdiction. (Motion at *1). Appellant says that because the case has been submitted on oral argument, "[a]ll of that work will be for naught if the trial court proceeds to trial." On that flawed basis, Appellant says that the Court "may issue all writs necessary to enforce its jurisdiction. Tex. Gov't Code § 22.221(a)." He also said that an appellate court retains the power to stay any actions of a trial court that may interfere with its jurisdiction or the subject matter of the appeal. (Motion at *1). But, proceeding to trial in the underlying criminal prosecution proceedings while the habeas appeal is still pending will not interfere with the Court's jurisdiction.

Section 22.221 of the Texas Government Code provides that each court of appeals may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court. TEX. GOV'T CODE ANN. § 22.221(a). While the Court has the authority to issue "all other writs necessary to enforce the jurisdiction of the court," a writ of prohibition is not an appropriate remedy here. The purpose of a writ of prohibition to enable a superior court to protect and enforce its jurisdiction and judgments. *In re Michael Munk*, No. 07-14-00299-CV, 2014 WL 4078946, at *5 (Tex. App.—Amarillo Aug. 15, 2014, no pet.) (*mem. op.*; *not designated for publication*) (*citing Holloway v. Fifth*

Court of Appeals, 767 S.W.2d 680, 683 (Tex. 1989)). The writ is typically used to protect the subject matter of an appeal or to prohibit an unlawful interference with the enforcement of a superior court's orders and judgments. *In re Michael Munk*, 2014 WL 4078946, at *5 (citing *Holloway*, 767 S.W.2d at 683).

A writ of prohibition is issued to prevent interference with higher courts in deciding a pending appeal or to prohibit a trial court's action when it affirmatively appears that the trial court lacks jurisdiction. *In re Michael Munk*, 2014 WL 4078946, at *5. But, a writ of prohibition would not be appropriate here because the trial court's action in placing the underlying criminal prosecution proceeding on the trial docket does not interfere with the pending appeal of the habeas proceeding and the trial court did not lack jurisdiction to place the underlying criminal prosecution proceeding on the trial docket. Even if Appellant is convicted at trial, the Court "does not lose jurisdiction over the pretrial habeas appeal that challenges the facial constitutionality of the statute under which the appellant was charged." *In re Victorick*, 2013 WL 6885130, at *2. Thus, Appellant's request for a writ of prohibition should be denied because the instant case does not present one of the limited purposes to be achieved by issuance of a writ of prohibition. *See In re Michael Munk*, 2014 WL 4078946, at *5.

Additionally, Rule 25.2(g) of the Rules of Appellate Procedure does not prohibit the case from proceeding to trial while the habeas proceeding is on appeal. Rule 25.2(g) states that “[o]nce the record has been filed in the appellate court, all further proceedings in the trial court—except as provided otherwise by law or by these rules—will be suspended until the trial court receives the appellate-court mandate.” TEX. R. APP. P. 25.2(g). Were a State’s appeal being done here—such as from the granting of a motion to suppress—then the trial court would lack jurisdiction over the case until appellate mandate has issued. *See Ex parte Macias*, 541 S.W.3d 782, 786 (Tex. Crim. App. 2017). But, since this is an appeal challenging the denial of habeas relief (as opposed to an appeal challenging a final judgment of conviction), Rule 25.2(g)’s mandate of suspension of proceedings in the trial court does not prohibit the case from proceeding to trial. *See Peters v. State*, 651 S.W.2d 31, 32–33 (Tex. App.—Dallas 1983, pet. dism’d as improvidently granted) (concluding that the pendency of a pretrial habeas corpus appeal did not affect trial court’s authority to proceed with adjudication of guilt); *In re Poulis*, 2020 WL 4726758 at *1 (rejecting the defense’s argument that Rule 25.2(g) deprived the trial court of jurisdiction to proceed to trial because the appeal of the order dismissing his pretrial habeas application was pending

since a pretrial habeas proceeding is a separate criminal action independent of the underlying criminal prosecution proceeding).

III(B).

Appellant's second argument is that the Court must prohibit trial to preserve Appellant's cognizable rights and due to Article 11.32's application to the case. (Motion at *1–10). In *In re Victorick*, it was noted that “the authorities cited by Victorick do not support Victorick's position that a stay of the trial is *mandatory* during the appeal of a cognizable pre-conviction claim.” *In re Victorick*, 2013 WL 6885130, at *2. Likewise, Appellant has not cited any statute or caselaw on point in support of his position that the Court is *required* to grant a stay of the trial proceedings pending appeal of the denial of his application for writ of habeas corpus. *Cf.* TEX. CODE CRIM. PROC. ANN. art. 44.01(e) (noting that *the State* is entitled to a stay in the proceedings pending the disposition of a State's appeal).

Appellant argues that Article 11.32 of the Code of Criminal Procedure mandates a stay of the underlying criminal prosecution proceeding until the habeas proceedings have been resolved on appeal. (Motion at *2–10). But, Article 11.32 mandates no such result. Article 11.32 states as follows:

When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas

corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.

TEX. CODE CRIM. PROC. ANN. art. 11.32 (*emphasis added*).

The italicized portions of Article 11.32 show that, as the title of the Article makes clear, the statute is solely addressing custody pending examination on the application for writ of habeas corpus and is not intended to prevent trial from commencing in the underlying criminal prosecution proceeding. The return of the writ simply placed Appellant in the custody of the habeas court until the Application was finally ruled upon; it did not purport to indefinitely delay the underlying criminal prosecution proceeding even after the habeas application was denied by the trial court. *See, e.g., Barnes v. State*, No. 01-19-00630-CR, 2020 WL 4354710, at *4 (Tex. App.—Houston [1st Dist.] July 30, 2020, pet. ref’d) (*mem. op.; not designated for publication*) (rejecting the position that Article 11.32 prevented the trial court from ruling on the State’s motion to adjudicate before ruling on his application for writ of habeas corpus because the article “provides court authority to release person on bond who has pending habeas proceeding before it”); *Ex parte Eureste*, 725 S.W.2d 214 (Tex. Crim. App. 1986) (“This

Court, having issued the writ of habeas corpus, is the only court that may determine whether the applicant may be allowed bail or required to remain in jail.”); *Wilson v. State*, No. 07-10-0347-CR, 2012 WL 414387, at *1 n. 3 (Tex. App.—Amarillo Feb. 9, 2012, no pet.) (*not designated for publication*) (“Bail pending disposition of a writ of habeas corpus is a matter under the direction and authority of the judge or court issuing the writ.”); 38 TEX. JUR. 3D EXTRAORDINARY WRITS § 117 (“By the production of a prisoner under a writ of habeas corpus, the court acquires absolute jurisdiction of the prisoner’s person, and the original cause of commitment is suspended until the case on application is disposed of.”). The habeas proceeding was “finally determined” when the denial order was entered on August 5, 2020. *See Greenwell v. Court of Appeals for the Thirteenth Judicial Dist.*, 159 S.W.3d 645, 650 (Tex. Crim. App. 2005) (noting that the right to appeal a pretrial habeas proceeding occurs because the habeas proceeding is considered a separate criminal action, with an order denying relief constituting a final judgment in the habeas corpus proceeding and “mark[ing] the end of the trial stage of that criminal action and the commencement of the timetable for appeal”). Nothing in Article 11.32 prevents the Court from presiding over a trial in the underlying criminal prosecution proceeding while the appeal of the denial of the pretrial application for writ of habeas corpus is pending.

Appellant also argues that he “has a cognizable right . . . not to be tried for violating an unconstitutional statute, but instead to be immediately released. It is that cognizable right that the trial court would deprive [Appellant] of by putting him to trial.” (Motion at *2). But, the appropriate inquiry is whether there is anything *preventing* trial from commencing while the habeas appeal is still pending. In the context of a successive-prosecution double jeopardy claim, the movant is entitled to a stay of further proceedings because in the context of successive prosecutions, protection from exposure to a second trial is the constitutional right being asserted. *See Gonzalez v. State*, 8 S.W.3d 640, 643 n. 9 (Tex. Crim. App. 2000); *Williams v. White*, 856 S.W.2d 847, 848 (Tex. App.—Fort Worth 1993, no pet.). The *Gonzalez* court stated that the successive-prosecution rationale against trial commencing prior on the habeas proceeding being decided on the merits does not apply to a multiple punishment double jeopardy claim because it can be fully vindicated on an appeal following final judgment. *Gonzalez*, 8 S.W.3d at 643 n. 9. Likewise, even if Appellant is convicted at trial, “he may still make a facial challenge to the constitutionality of the statute in his direct appeal.” *In re Victorick*, 2013 WL 6885130, at *2; *see also Ex parte Perry*, 483 S.W.3d 884, 895–96 (Tex. Crim. App. 2016) (noting that while the constitutional protections involving double jeopardy and bail are within the

category of rights that would be effectively undermined if not vindicated pretrial, facial constitutional challenges “are cognizable on pretrial habeas *regardless of whether the particular constitutional right at issue would be effectively undermined if not vindicated prior to trial.*”) (*emphasis added*). Thus, unlike a successive-prosecution double jeopardy claim, Appellant may be tried in the underlying criminal prosecution proceeding even if the habeas appeal is still pending since “[a] facial challenge to the constitutionality of a statute is neither an absolute requirement or prohibition, nor a right that is waivable-only, but is a right that is forfeited if it is raised for the first time on appeal.” *In re Victorick*, 2013 WL 6885130, at *3.

III(C).

Appellant’s third argument is that policy dictates a stay of the trial court proceedings. (Motion at *10–13). There is nothing in either the law or in policy considerations preventing the underlying criminal prosecution proceeding from proceeding to trial, even though the appeal challenging the denial of the pretrial application for writ of habeas corpus is still pending. The jurisdiction of a court to consider an application for writ of habeas corpus is determined at the time the application is filed. *Kniatt v. State*, 206 S.W.3d 657, 663 (Tex. Crim. App. 2006). Appellant’s habeas appeal is a separate and distinct proceeding before the Court from the underlying

criminal prosecution proceeding currently set for trial on April 4, 2022. *See, e.g., Greenwell*, 159 S.W.3d at 649-50; *Ex parte Rieck*, 144 S.W.3d 510, 516 (Tex. Crim. App. 2004); *In re Poulis*, 2020 WL 4726758, at *1; *In re Victorick*, 2013 WL 6885130, at *2. “Because this habeas proceeding is separate, a denial of the request for habeas relief creates a final judgment that the applicant may appeal immediately, before the trial proceedings in the criminal prosecution have concluded.” *Enard v. State*, 513 S.W.3d 206, 211 (Tex. App.—Houston [14th Dist.] 2016, pet. ref’d); *see also Green v. State*, 999 S.W.2d 474, 477 (Tex. App.—Fort Worth 1999, pet. ref’d) (noting that habeas corpus proceedings should be docketed separately from the substantive cause and given a different cause number, with an appeal from an order denying relief not constituting an interlocutory appeal from the substantive cause arising out of an indictment).

None of Appellant’s policy arguments show that a stay of the underlying criminal prosecution proceedings should be granted pending resolution of the habeas appeal. Appellant argues that “[t]he substantive right here is the right not to be prosecuted for violating a void statute.” (Motion at *11). But, facial challenges to the constitutionality of a statute have never been held to enjoy the right to an automatic stay of proceedings pending appeal. This is especially so when one considers not only that

statutes are presumed valid even in the face of a constitutional challenge and that Appellant bears the burden of establishing that *no* set of circumstances exist under which the statute would be valid, *see Allen v. State*, 614 S.W.3d 736, 740–41 (Tex. Crim. App. 2019), but also that multiple courts of appeals have upheld the facial constitutionality of the Online Impersonation statute against similar overbreadth challenges—and no appellate courts has decided to the contrary. *See, e.g., Dupuy v. State*, 631 S.W.3d 233, 243–44 (Tex. App.—Houston [14th Dist.] 2020, pet. ref’d); *Ex parte Maddison*, 518 S.W.3d 630, 635–39 (Tex. App.—Waco 2017, pet. ref’d); *State v. Stubbs*, 502 S.W.3d 218, 225–35 (Tex. App.—Houston [14th Dist.] 2016, pet. ref’d); *Ex parte Bradshaw*, 501 S.W.3d 665, 671–77 (Tex. App.—Dallas 2016, pet. ref’d); *Ex parte Boyd*, No. 09-17-00366-CR, 09-17-00367-CR, 2018 WL 1527906, at *2–3 (Tex. App.—Beaumont Mar. 28, 2018, pet. ref’d) (*mem. op.; not designated for publication*); *State v. Dupuy*, Nos. 14-16-00569-CR, 14-16-00570-CR, 2017 WL 3567774, at *1 (Tex. App.—Houston [14th Dist.] Aug. 17, 2017, pet. ref’d) (*mem. op.; not designated for publication*); *LeBlanc v. State*, No. 14-16-00624-CR, 2017 WL 1086575, at *1 (Tex. App.—Houston [14th Dist.] Mar. 21, 2017, pet. ref’d) (*mem. op.; not designated for publication*); *Ex parte McCormick*, No. 05-16-00746-CR, 2016 WL 6135522,

at *1 (Tex. App.—Dallas Oct. 21, 2016, pet. ref'd) (*mem. op.*; *not designated for publication*).

Appellant also argues that “judicial efficiency is better served by the question of the facial unconstitutionality of a statute being decided here, before the case is tried.” (Motion at *12). Judicial efficiency is not being violated, but rather is being served by proceeding to trial in the underlying criminal prosecution proceeding for an offense alleged to have been committed almost six years ago. (*See* CR p. 14: listing the offense date as August 11, 2016); (Tab 3, p. 1: also listing the offense date as August 11, 2016). That does not mean, however, that Appellant will be deprived of the opportunity to challenge the constitutionality of the Online Impersonation statute or be unable to avoid punishment for a statute he considers void. First, he may continue to pursue his habeas appeal, a route that he is obviously choosing to take. Second, he may seek acquittal by the factfinder, which, if successful, would avoid conviction and punishment for the offense. Third, if convicted of the offense, he may file a post-conviction appeal and challenge the constitutionality of the statute in that appeal. Finally, Appellant may avoid serving a sentence of imprisonment or a probated sentence pending appeal if convicted of the offense by requesting a bond pending appeal. *See* TEX. CODE CRIM. PROC. ANN. art. 44.04(b)–(c); TEX.

PENAL CODE ANN. § 33.07(c). Appellant’s policy arguments notwithstanding, there is no valid reason to stay the trial proceedings while the habeas appeal is litigated, especially given the potential avenues available to Appellant to continue challenging the facial constitutionality of the statute as well as seek to avoid serving a sentence of imprisonment or probated sentence pending resolution of the facial constitutional challenge.

IV.

Appellant states in his concluding paragraph that a stay of the trial court proceedings should be granted because “the trial court lacks jurisdiction to try [Appellant], because judicial efficiency and protection of [Appellant’s] substantive rights require it, and to protect this Court’s jurisdiction and the subject matter of this appeal.” (Motion at *13). But, for the reasons shown above, Appellant has not shown why a motion for stay or writ of prohibition should be granted.

WHEREFORE, the State respectfully requests that Appellant’s Appendix to Motion for Stay or Writ of Prohibition be denied and that the Court permit the underlying criminal prosecution proceeding to proceed to trial as currently scheduled.

Respectfully submitted,

K. SUNSHINE STANEK

Criminal District Attorney

State Bar No. 24027884

By: /s/ Jeffrey S. Ford

Jeffrey S. Ford

Assistant Criminal District Attorney

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Certificate of Service

I certify that a true and correct copy of the above foregoing State's Response has been delivered to Mark Bennett, Attorney for Appellant, through the electronic filing manager to his e-mail address on March 17, 2022.

K. SUNSHINE STANEK

Criminal District Attorney

State Bar No. 24027884

By: /s/ Jeffrey S. Ford

Jeffrey S. Ford

Certificate of Compliance

Pursuant to TEX. R. APP. P. 9.4(i)(3), I further certify that, relying on the word count of the computer program used to prepare the foregoing State's Response, this document contains 3,818 words, inclusive of all portions required by TEX. R. APP. P. 9.4(i)(1) to be included in calculation of length of the document.

K. SUNSHINE STANEK

Criminal District Attorney

State Bar No. 24027884

By: /s/ Jeffrey S. Ford

Jeffrey S. Ford

Automated Certificate of eService

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Jeffrey Ford on behalf of Jeffrey Ford
Bar No. 24047280
JFord@lubbockcounty.gov
Envelope ID: 62719533
Status as of 3/18/2022 7:52 AM CST

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Jeffrey Ford	24047280	jford@lubbockcda.com	3/17/2022 4:32:10 PM	SENT

Associated Case Party: Rodger Claycomb

Name	BarNumber	Email	TimestampSubmitted	Status
Lane Haygood	24066670	lhaygood@galyen.com	3/17/2022 4:32:10 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Bennett		mb@ivi3.com	3/17/2022 4:32:10 PM	SENT

Tab C

Cause No.07-20-00238-CR

Ex parte Rodger Claycomb

In the Court of Appeals
for the Seventh District of Texas
at Amarillo

Appendix to Motion for Stay
Or
Writ of Prohibition

FILED IN
7th COURT OF APPEALS
AMARILLO, TEXAS

3/16/2022 10:30:22 AM

BOBBY RAMIREZ
Clerk

CHIEF JUSTICE QUINN, JUSTICE PARKER, AND JUSTICE DOSS:

The trial court has denied Mr. Claycomb's motion to continue trial in this case, and has set Mr. Claycomb for trial on April 4, 2022. Please order the trial court not to proceed to trial in this case before the habeas appeal is final.

THIS COURT SHOULD PROHIBIT TRIAL TO ENFORCE ITS JURISDICTION.

The case is briefed, argued, and submitted. All of that work will be for naught if the trial court proceeds to trial. This Court may issue all writs necessary to enforce its jurisdiction. Tex. Govt. Code § 22.221(a).

"An appellate court still retains the overarching power to stay any actions of a trial court ... that may interfere with its jurisdiction or the subject matter of the appeal." *In re Sheshtawy*, 154 S.W.3d 114, 124 (Tex. 2004).

THIS COURT MUST PROHIBIT TRIAL TO PRESERVE MR. CLAYCOMB'S COGNIZABLE RIGHTS.

"Neither a trial court nor an appellate court should entertain an application for writ of habeas corpus when there is an adequate remedy by appeal." *Ex parte Weise*, 55 S.W.3d 617, 619 (Tex. Crim. App. 2001).

Trial and appellate courts will entertain an application for writ of habeas corpus where, as here, the applicant alleges that the statute under which he is being prosecuted is unconstitutional on its face. *Id.*

Ipsso facto, there is *no adequate remedy on appeal* where the applicant is being *prosecuted under a facially unconstitutional statute*.

Further, the Court of Criminal Appeals has said that pretrial habeas is only cognizable when resolution of the question presented, if resolved in favor of the applicant, would result in the petitioner's immediate release. *Ex parte Weise*, 55 S.W.3d 617, 619 (Tex. Crim. App. 2001).

Mr. Claycomb has a cognizable right, in other words, not to be tried for violating an unconstitutional statute, but instead to be immediately released.

It is that cognizable right that the trial court would deprive Mr. Claycomb of by putting him to trial.

A little-cited Texas statute relieves the trial court of authority to put Mr. Claycomb to trial on the *Indictment*. Article 11.32 of the Texas Code of Criminal Procedure provides:

Art. 11.32. CUSTODY PENDING EXAMINATION. When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the

direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safekeeping under the control of the judge or court, till the case is finally determined.

Here, return of the writ has been made, and Mr. Claycomb has been brought before the court. He is therefore “no longer detained on the original ... process”—the charging instrument, here the indictment—“but under the authority of the [writ of] habeas corpus.”

A court without the authority to *hold* an accused under a charging instrument has, necessarily, lost the authority to *try* the accused under that charging instrument. Because he is not detained on the indictment, but under the authority of the habeas corpus, Mr. Claycomb cannot be tried. Tex. Const. art. 1 sec. 10.

In fact, because the habeas corpus is on appeal to this Court, the trial court has no jurisdiction over Mr. Claycomb. It is the presentment of an indictment that invests a court with jurisdiction of the cause. Tex. Const. art. 5 sec. 12. Once return of the writ was made, the trial court had jurisdiction only by virtue of that writ “till the [habeas] case is finally determined. Tex. Code Crim. Proc. art. 11.32. The trial court lost jurisdiction over the habeas corpus when this Court acquired jurisdiction.

While ordinarily the original process and the habeas corpus are in the same court, the difference between “the original warrant or process” and “the habeas corpus” becomes more stark in the case of a writ issued by one court to correct another court’s unlawful detention.

If Court A has detained the accused under some charging instrument (whether an indictment or an information) and Court B has issued a writ of habeas corpus under article 11.08, there is an “original process”—the charging instrument—giving Court A jurisdiction, and an application for writ of habeas corpus giving Court B jurisdiction. According to article 11.32, after the applicant has been brought before Court B and until the case is finally determined, the applicant is Court B’s responsibility. This is appropriate—if Court A may have acted improperly, Court A should not act further until that issue has been finally determined by Court B.

By comity, often the same court is both Court A and Court B. As Court A, it has jurisdiction over the defendant by reason of the “original process”—the charging instrument.

Then when the application for writ of habeas corpus is filed and the applicant is brought to court, Court A becomes Court B, with jurisdiction over the applicant under the authority of the habeas corpus.

The applicant is “no longer detained on the original warrant or process.”

When that result is appealed, the appellate court, which will review the denial of habeas relief *de novo*, becomes Court B. It obtains, and the trial court loses, jurisdiction over the application for writ of habeas corpus. Until that appeal is final—“till the result is finally determined”—the trial court has no jurisdiction to do anything in either the original case or the habeas case.¹

ARTICLE 11.32 IS JURISDICTIONAL.

While article 11.32 does not talk in terms of jurisdiction, but only of the applicant’s being “detained” and his “safekeeping,” cases that address article 11.32, or its predecessor statutes, article 182, Rev. Cr. Code Proc., and article 144, V.A.C.C.P., reflect that article 11.32 is jurisdictional.

A trial court's jurisdiction over a criminal case consists of the power of the court over the ‘subject matter’ of the case, coupled with ‘personal’ jurisdiction over the accused. Unlike in civil cases, where personal jurisdiction over a party may be had merely by that party's appearance before the court, criminal jurisdiction over a person requires the filing of a valid indictment or information.

¹ Except to dismiss the charging instrument. A trial court can always dismiss a void charging instrument.

Jenkins v. State, 592 S.W.3d 894 (Tex. Crim. App. 2018).

KEARBY PROVIDES AN EXAMPLE FROM THE COURT OF CRIMINAL APPEALS

In the 1896 case of *Ex parte Kearby*, two lawyers trying a criminal case were held in contempt by the trial court (“Court A”) on a Saturday morning. They applied on the same day to the Court of Criminal Appeals (“Court B”) for a writ of habeas corpus, which was granted. The Court B Judge issuing the writ released them on bonds, and they returned to defending their client in Court A.²

The Court A judge told the two lawyers they could not proceed until they had purged themselves of the original contempt that was the subject of the first application for writ of habeas corpus. Lawyer Kearby said, “Your Honor, I have not committed any contempt, and I decline to purge for what I am not guilty of.”³ He also

became quite boisterous and excited; and ... used a profane epithet, applying it to the judge in such manner as that it could be heard by those immediately around him[.]⁴

² *Ex parte Kearby*, 35 Tex. Crim. 634, 641, 34 S.W. 962, 963 (1896).

³ *Id.* at 641, 34 S.W. at 962.

⁴ *Id.* at 641–42, 34 S.W. at 962.

The Court A judge ordered him back to jail.

After a second writ of habeas corpus was granted (“between 6 and 7 o’clock of said Saturday evening”) but before Court B heard the writ, Court A had entered a written order, reproduced here in full:

Saturday, February 29, 1896. It is ordered by the court that J. C. Kearby be, and he is hereby, adjudged to be again in contempt of this court, in that the said Kearby, being already in contempt of this court, as appears from the records thereof, and not having purged himself of said contempt, was informed by the court, after having been released by another tribunal, by writ of habeas corpus, from jail, and on again appearing thereafter in this court, that he nor Mr. Hawkins, who had also been released by said habeas corpus proceedings, could not again appear in the case then on trial until they had purged themselves of said contempt; whereupon said Kearby arose, and said that he had been guilty of no contempt of this court, and that he did not intend to purge himself of what he had not done; and thereupon the court ordered the sheriff to take charge of said Kearby, who insisted upon addressing the court. And the court, in reply to a question addressed by Mr. Hawkins, stated that he was speaking in all kindness of Mr. Kearby, who, again, in a boisterous manner, made the following statement: “I don't want you to treat me kindly. You can talk to me out of court. I want you to treat me as mean as you know how. I want to say that nothing you can do will ever make me look upon you with regard again;” and was continuing to talk in a like manner, when he was ordered more than once to take his seat, which he refused to do, when he was ordered to jail. For all of which it is ordered by the court that said J. C. Kearby be punished for said contempt by imprisonment in the

county jail until 9 o'clock tonight, or until he shall have purged himself of said contempt. It is therefore ordered, adjudged, and decreed by the court that the said J. C. Kearby be, and he is hereby, remanded to the custody of the sheriff of Dallas county, Texas, until 9 o'clock to-night, or until he shall have purged himself of said contempt.⁵

Court B noted that the entry of this written order after it had acquired jurisdiction was “without authority.”⁶

If lawyer Kearby had been in contempt of court when he returned to court on Saturday afternoon, wrote Court B, “[i]t would have been a very easy matter ... for the judge to have so formally adjudicated”—to have entered a lawful order. But there was “no pretense” that Kearby’s conduct on Saturday afternoon was the basis of the order made by the judge,”⁷ and Court A had, because of the issuance of the writ of habeas corpus, “lost jurisdiction” over that morning’s contempt.⁸

Sixty-four years later, in *Ex parte Davis*, the Court of Criminal Appeals again wrote of article 11.32 in terms of jurisdiction. There the

⁵ *Id.* at 642, 34 S.W. at 962–63.

⁶ *Id.* at 644, 34 S.W. at 964.

⁷ *Id.* at 646, 34 S.W. at 965.

⁸ *Id.* at 645, 34 S.W. at 964.

government contended that the court had not acquired jurisdiction, because it “acquires jurisdiction only after there has been a proper bond executed in the court below, or if the relator is in custody.”⁹ The court rejected this argument because of “the provisions of Article 144, V.A.C.C.P.,” which were the same as article 11.32.¹⁰

In *Ex parte Eureste*, the Court of Criminal Appeals (“Court B”) had issued a writ of habeas corpus, and the district court (“Court A”) purported to grant bail. Court B held, based on article 11.32, that Court A was without authority to grant bail after Court B had issued the writ.¹¹

In this millennium, in an unpublished statement dissenting from the court’s order granting bail, Judge Womack, joined by Judges Price, Johnson, and Cochran, noted that the Court of Criminal Appeals’ authority to grant bail arises only from article 11.32, and only if the court

⁹ *Ex parte Davis*, 171 Tex. Crim. 629, 633, 353 S.W.2d 29, 32 (1962).

¹⁰ *Id.* at 634, 353 S.W.2d at 32.

¹¹ *Ex parte Eureste*, 725 S.W.2d 214, 216 (Tex. Crim. App. 1986). By analogy, if an applicant were in custody while the habeas corpus was pending, the trial court could not grant bail. By extension, the trial court could not lawfully revoke the applicant’s bail while the habeas corpus was pending.

issues the writ. That is, *only* once the Court of Criminal Appeals issues the writ is the applicant's safekeeping under that court's authority.¹²

POLICY DICTATES A STAY.

Where a court's jurisdiction is the very issue on appeal to a higher court, prudence and judicial economy, if nothing else, dictate that the lower court be restrained from acting until that issue is decided.

The Court of Criminal Appeals has noted, "Pretrial habeas should be reserved for situations in which the protection of the applicant's substantive rights or the conservation of judicial resources would be better served by interlocutory review."¹³

One such situation is that presented here, in which the accused contends that the charging instrument is based on a statute that is unconstitutional on its face.¹⁴

Both "protection of the applicant's substantive rights" and "conservation of judicial resources" militate in favor of a mandatory stay under article 11.32.

¹² *Ex parte Campbell*, 56045-04, 2003 WL 21467578, at *1 (Tex. Crim. App. June 24, 2003).

¹³ *Ex parte Weise*, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001).

¹⁴ *Id.*

PROTECTION OF THE APPLICANT'S SUBSTANTIVE RIGHTS DEMANDS A STAY.

The Code of Criminal Procedure requires that “Every provision relating to the writ of habeas corpus ... be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it.”¹⁵

Where the validity of the charging instrument is at issue in habeas, the applicant’s substantive rights are best protected by conclusively determining that issue before forcing the applicant into the cost, expense, and stress of a trial.

The substantive right here is *the right not to be prosecuted for violating a void statute*. If the statute is unconstitutional on its face, there is no valid statute and the indictment is void.¹⁶ “An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment.”¹⁷ “If there is no valid statute

¹⁵ Tex. Code Crim. Proc. art. 11.04.

¹⁶ *Ex parte Weise*, 55 S.W.3d at 620.

¹⁷ *Ex parte Stein*, 61 Tex. Crim. 320, 324 (1911).

under which an accused may be charged, he is entitled to be discharged because any indictment under an invalid statute is also void.”¹⁸

If “the protection of the applicant’s substantive rights” is, as the Court of Criminal Appeals said in *Ex parte Weise*, to be “better served by interlocutory appeal,” an appeal of a challenge to the constitutionality of a statute, even if not, strictly speaking, interlocutory, must prevent the trial court from acting as though the issue had been decided until the issue is finally decided.

JUDICIAL EFFICIENCY DEMANDS A STAY.

Likewise, judicial efficiency is better served by the question of the facial unconstitutionality of a statute being decided here, before the case is tried: if the answer is that the statute is unconstitutional, the trial is for naught.

The ultimate question in the appeal of a habeas corpus proceeding as described here is whether the statute is facially unconstitutional. If it is, the statute is void, and the trial court has no jurisdiction. For the trial

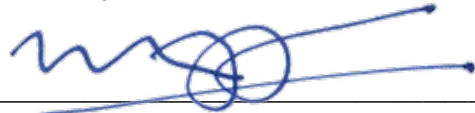
¹⁸ *Ex parte Muniz*, 655 S.W.2d 224, 225 (Tex. App.—Houston [14th Dist.] 1982), aff’d, 692 S.W.2d 101 (Tex. Crim. App. 1985). This is different than the situation in which an accused challenges a nonjurisdictional issue, such as the denial of reasonable bail pretrial, and appeals that issue—there the trial court can proceed to trial regardless of how the contested issue is decided because even if the accused is right the court has jurisdiction.

court to proceed to trial, it would have to presume the answer to that question, and if it this Court or the Court of Criminal Appeals holds that it was wrong, its actions would be void.

CONCLUSION

Because the trial court lacks jurisdiction to try Mr. Claycomb, because judicial efficiency and protection of Mr. Claycomb's substantive rights require it, and to protect this Court's jurisdiction and the subject matter of this appeal, please order a stay of proceedings in the trial court.

Thank you,



Mark Bennett

SBN 00792970

Bennett & Bennett

917 Franklin Street, Fourth Floor

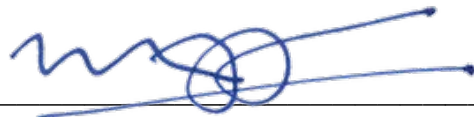
Houston, Texas 77002

713.224.1747

mb@ivi3.com

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing instrument were mailed to counsel for the state on the same date as the original was electronically filed with the clerk of this court.

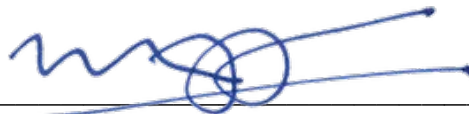


Mark Bennett

Attorney for Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 9.4

I hereby certify that this document complies with the requirements of Tex. R. App. Proc. 9.4(i)(2)(B) because there are 2,742 words in this document, excluding the portions of the document excepted from the word count under rule 9(i)(1), as calculated by the MS Word computer program used to prepare it.



Mark Bennett

Attorney for Appellant

Appendix to Motion for Stay
Or
Writ of Prohibition

APPENDIX

Motion for Continuance	Tab 1
Order Denying Continuance	Tab 2
Trial Docket	Tab 3

TAB 1 – Motion for Continuance

AMG

NO. 2018-415,337

STATE OF TEXAS

vs.

RODGER CLAYCOMB

§
§
§
§
§

IN THE 140th DISTRICT COURT

LUBBOCK COUNTY, TEXAS

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant, and files this Motion for Continuance of this cause from its present setting of Jury Trial, April 4, 2022, and shows the following:

1. This motion is filed in accordance with Article 29.03 of the Texas Code of Criminal Procedure.
2. Counsel for Defendant requests this matter be reset due to the pending appeal on Defendant's Application for Writ of Habeas Corpus which challenges the validity of the charging instrument. The Writ of Habeas Corpus is in Cause No. 2019001978 in the 140th District Court. The Writ of Habeas Corpus is pending in Cause No. 07-20-00238-CR at the 7th Court of Appeals of Texas.
3. This motion is not made for purposes of delay but that justice may be done.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court enter its order continuing this cause until some future date, or, in the alternative, sets this motion for hearing.

Respectfully submitted,

The Kiechler Law Firm PLLC
1708 15th St.
Lubbock, Texas 79401
Tel: 806.712.2889
Fax: 806.712.2529

By: _____

Justin Kiechler

Justin@TheLubbockLawyer.com

State Bar No. 24067706

Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that on March 7, 2022, a true and correct copy of the above and foregoing document was served on the District Attorney's Office, Lubbock County, by Email.

Justin Kiechler

VERIFICATION

STATE OF TEXAS

§

§

COUNTY OF LUBBOCK

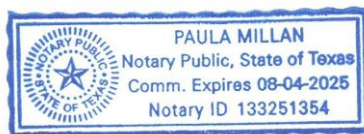
§

ON THIS DAY personally appeared Justin Kiechler, who, after being placed under oath, stated the following: "My name is Justin Kiechler and I am the attorney of record for Defendant and have been so at all material times relevant to this proceeding. "I have read the Motion for Continuance and every statement is within my personal knowledge and is true and correct."

Justin Kiechler

Sworn to and subscribed before me on March 7, 2022.

NOTARY PUBLIC



TAB 2 – Order Denying Continuance

CAUSE NO. 2018-415,337


STATE OF TEXAS	§	IN THE 140 TH DISTRICT COURT
	§	
VS.	§	OF
	§	
RODGER CLAYCOMB	§	LUBBOCK COUNTY, TEXAS

ORDER DENYING MOTION FOR CONTINUANCE

On March 10, 2022 came to be considered the *Motion for Continuance* filed March 7, 2022, in this matter.

The Court, after considering the evidence and argument of counsel, hereby finds that the same should be DENIED.

SO ORDERED this 10th day of March 2022.



DOUGLAS H. FREITAG
Judge Presiding

TAB 3 – Trial Docket

Lubbock County District & County Courts-at-Law – Criminal Docket
140th District Court - Supplemental Jury Trial Docket
Monday, 04/04/2022 - 9:00 AM
Monday, 04/04/2022 - 5:00 PM

#1

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018415095	BELLER, LORA (SO# 208559)	In Jail: NO
	Charge: THEFT \$30K<150K	Filed Date: 06/12/2018	Case Age: 1345 Resets: 0
	Degree: 3rd Degree Felony	Offense Date: 04/05/2018	Case Status: Filed
3	Defense:	Upd: 05/01/2018	KING, MICHAEL 806-478-1322
	State:	Upd: 05/01/2018	WORKS, JUSTIN 806-775-1100
Not Guilty Jury Trial	Bond Info:	Amt: \$15,000.00 Bond# 7142475 Posted: 07/05/2018	Type: Surety Bond
		Company: TRAMMEL'S LUBBOCK BAIL BOND	Status: Active

#2

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018415337	CLAYCOMB, JOSEPH RODGER (SO# 208366)	In Jail: NO
	Charge: ONLINE IMPERSONATION	Filed Date: 07/10/2018	Case Age: 1317 Resets: 0
	Degree: 3rd Degree Felony	Offense Date: 08/11/2016	Case Status: Filed
5	Defense:	Upd: 06/28/2018	KIECHLER, JUSTIN 806-712-2889
	State:	Upd: 06/28/2018	NESBITT, CASSIE 806-767-1100
Not Guilty Jury Trial	Bond Info:	Amt: \$0.00 Bond# 5003898 Posted: 07/07/2018	Type: Cash Bond
		Company: CLAYCOMB, RODGER	Status: Active

#3

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018415742	DIAZ, NOE ELOY (SO# 128658)	In Jail: NO
	Charge: ASSAULT DOMESTIC W/PRIOR	Filed Date: 09/04/2018	Case Age: 1261 Resets: 0
	Degree: 3rd Degree Felony	Offense Date: 03/16/2018	Case Status: Filed
6	Defense:	Upd: 07/24/2018	OLGUIN, NICK L. 806-741-1111
	State:	Upd: 07/24/2018	GORMAN, JESSICA 806-767-1100
Not Guilty Jury Trial	Bond Info:	Amt:	Bond#
		Company:	Status:

#4

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018415816	SALINAS, DANIEL (SO# 175222)	In Jail: NO
	Charge: FELON IN POSS OF FIREARM	Filed Date: 09/18/2018	Case Age: 1247 Resets: 0
	Degree: 3rd Degree Felony	Offense Date: 06/28/2018	Case Status: Filed
8	Defense:	Upd: 09/21/2018	SOLORZANO, ISAIAS JOEL 806-853-8884
	State:	Upd: 07/02/2018	GORMAN, JESSICA 806-767-1100
Not Guilty Jury Trial	Bond Info:	Amt: \$10,000.00 Bond# 7170703 Posted: 01/03/2020	Type: Surety Bond
		Company: LONE STAR BAIL BONDS II (LUBBOCK)	Status: Active; Inactive

#5

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018415997	SMITH, CLAYTON (SO# 148702)	In Jail: NO
	Charge: INJ CHILD INT/KNOW-BI	Filed Date: 10/23/2018	Case Age: 1212 Resets: 0
	Degree: 3rd Degree Felony	Offense Date: 06/08/2018	Case Status: Filed
9	Defense:	Upd: 07/16/2018	BLEVINS, CHARLES 806-370-2277
	State:	Upd: 07/16/2018	GORMAN, JESSICA 806-767-1100
Not Guilty Jury Trial	Bond Info:	Amt: \$30,000.00 Bond# 7145919 Posted: 10/22/2018	Type: Surety Bond
		Company: BRANDI'S BAD BOYS BAIL BOND (LUBBOCK)	Status: Active

#6
#3

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018416002	DIAZ, NOE ELOY (SO# 128658)	In Jail: NO
	Charge: PCS PG1 <1G	Filed Date: 10/23/2018	Case Age: 1212 Resets: 0
	Degree: State Jail Felony	Offense Date: 06/29/2018	Case Status: Filed
7	Defense:	Upd: 07/02/2018	OLGUIN, NICK L. 806-741-1111
	State:	Upd: 07/02/2018	GORMAN, JESSICA 806-767-1100
	Bond Info:	Amt:	Bond#
		Posted:	Type:

CASES MAY BE HEARD BY ANY DISTRICT CT. JUDGE IN LUBBOCK CO., OR BY A VISITING JUDGE. MAKE ALL ANNOUNCEMENTS TO 140TH DIST. CT.

Lubbock County District & County Courts-at-Law – Criminal Docket
140th District Court - Supplemental Jury Trial Docket
Monday, 04/04/2022 - 9:00 AM
Monday, 04/04/2022 - 5:00 PM

#6

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018416082	WILLIAMS, CHRISTOPHER DEAN (SO# 123557)		In Jail: NO
	Charge: FRAUD USE/POSS ID=5-10	Filed Date: 10/30/2018	Case Age: 1205	Resets: 0
10	Degree: 3rd Degree Felony	Offense Date: 05/24/2018	Case Status: Filed	
	Defense: Upd: 07/24/2018	DEHAAS, WILLIAM D	806-763-9264	
	State: Upd: 07/24/2018	WORKS, JUSTIN	806-775-1100	
Not Guilty Jury Trial	Bond Info: Amt: \$3,500.00	Bond# 7160353	Posted: 06/28/2019	Type: Surety Bond
	Company: BRANDI'S BAD BOYS BAIL BOND (LUBBOCK)		Status: Active	

#7

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018416349	ADKINS, JUNE (SO#)		In Jail: NO
	Charge: FSRA - INJURY	Filed Date: 12/18/2018	Case Age: 1156	Resets: 0
11	Degree: 3rd Degree Felony	Offense Date: 05/10/2018	Case Status: Filed	
	Defense: Upd: 07/19/2018	DICKERSON, BARBARA	806-785-8282	
	State: Upd: 07/19/2018	WORKS, JUSTIN	806-775-1100	
Not Guilty Jury Trial	Bond Info: Amt:	Bond#	Posted:	Type:
	Company:		Status:	

#8

Monday, 04/04/2022 @ 9:00 AM	Cause# 2018416387	SALAS, OSCAR (SO# 188249)		In Jail: NO
	Charge: THEFT \$1500<\$20K ENH	Filed Date: 12/18/2018	Case Age: 1156	Resets: 0
12	Degree: 3rd Degree Felony	Offense Date: 09/09/2014	Case Status: Filed	
	Defense: Upd: 07/26/2019	OLGUIN, NICK L.	806-741-1111	
	State: Upd: 11/08/2018	WORKS, JUSTIN	806-775-1100	
Not Guilty Jury Trial	Bond Info: Amt: \$10,000.00	Bond# 7158564	Posted: 05/20/2019	Type: Surety Bond
	Company: TRAMMEL'S LUBBOCK BAIL BOND		Status: Active	

#9

Monday, 04/04/2022 @ 9:00 AM	Cause# 2019416534	EVANS, SHERWIN T (SO# 169018)		In Jail: NO
	Charge: PCS PG1 1-4G	Filed Date: 01/15/2019	Case Age: 1128	Resets: 0
14	Degree: 3rd Degree Felony	Offense Date: 10/11/2018	Case Status: Filed	
	Defense: Upd: 10/12/2018	BROWN, MIKE	806-763-9493	
	State: Upd: 10/12/2018	GORMAN, JESSICA	806-767-1100	
Not Guilty Jury Trial	Bond Info: Amt: \$5,000.00	Bond# 7143254	Posted: 10/12/2018	Type: Surety Bond
	Company: CENTRAL BAIL BONDS II (LUBBOCK) 1200		Status: Active	

#10

Monday, 04/04/2022 @ 9:00 AM	Cause# 2019416869	CLEVELAND, DENZAIL DAMONE (SO# 193699)		In Jail: NO
	Charge: ASSAULT DOMESTIC W/PRIOR	Filed Date: 03/12/2019	Case Age: 1072	Resets: 0
15	Degree: 3rd Degree Felony	Offense Date: 11/25/2018	Case Status: Filed	
	Defense: Upd: 11/26/2018	MARTINEZ, VINCE	806-795-3411	
	State: Upd: 11/26/2018	WORKS, JUSTIN	806-775-1100	
Not Guilty Jury Trial	Bond Info: Amt: \$20,000.00	Bond# 7175570	Posted: 05/07/2020	Type: Surety Bond
	Company: TRAMMEL'S LUBBOCK BAIL BOND		Status: Active; Inactive	

#11

Monday, 04/04/2022 @ 9:00 AM	Cause# 2019416936	TYSON, BRITTANY DAWN (SO# 182329)		In Jail: NO
	Charge: FRAUD USE/POSS ID <5 ELD	Filed Date: 03/19/2019	Case Age: 1065	Resets: 0
13	Degree: 3rd Degree Felony	Offense Date: 01/08/2019	Case Status: Filed	
	Defense: Upd: 03/13/2019	MORROW, MATT K	806-747-7373	
	State: Upd: 02/04/2019	GORMAN, JESSICA	806-767-1100	

Lubbock County District & County Courts-at-Law – Criminal Docket
140th District Court - Supplemental Jury Trial Docket
Monday, 04/04/2022 - 9:00 AM
Monday, 04/04/2022 - 5:00 PM

#12

Monday, 04/04/2022 @ 9:00 AM 18	Cause# 2019417053 Charge: ATTACK BY DOG SBI Degree: 3rd Degree Felony Defense: Upd: 04/03/2019 State: Upd: 03/07/2019	WHITE, COURTNEY M (SO# 95401) Filed Date: 04/02/2019 Offense Date: 02/27/2019 STANGL, FREDERICK M. GORMAN, JESSICA	Case Age: 1051 Case Status: Filed 806-765-7370 806-767-1100	In Jail: NO Resets: 0
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#13

Monday, 04/04/2022 @ 9:00 AM 19 Not Guilty Jury Trial	Cause# 2019417617 Charge: EVADE IN VEHICLE Degree: 3rd Degree Felony Defense: Upd: 10/22/2018 State: Upd: 10/22/2018 Bond Info: Amt: Company:	CASTILLO, ERNEST R (SO# 210191) Filed Date: 06/25/2019 Offense Date: 10/21/2018 KEY, LAURIE L. GORMAN, JESSICA Bond# Posted:	Case Age: 967 Case Status: Filed 806-771-3933 806-767-1100 Type:	In Jail: NO Resets: 0 Status: Inactive
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#1

Monday, 04/04/2022 @ 9:00 AM 4 Not Guilty Jury Trial	Cause# 2019417745 Charge: THEFT \$30K<150K Degree: 3rd Degree Felony Defense: Upd: 01/15/2020 State: Upd: 05/06/2019 Bond Info: Amt: Company:	BELLER, LORA (SO# 208559) Filed Date: 07/09/2019 Offense Date: 06/20/2016 KING, MICHAEL WORKS, JUSTIN Bond# Posted:	Case Age: 953 Case Status: Filed 806-478-1322 806-775-1100 Type:	In Jail: NO Resets: 0 Status:
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#14

Monday, 04/04/2022 @ 9:00 AM 20 Not Guilty Jury Trial	Cause# 2019418036 Charge: INJ CHILD INT/KNOW-BI Degree: 3rd Degree Felony Defense: Upd: 10/09/2019 State: Upd: 08/06/2019 Bond Info: Amt: Company:	STUBBLEFIELD, DEVERICK (SO# 213073) Filed Date: 08/20/2019 Offense Date: 05/01/2018 GUNTER, RUSSELL I "RUSTY", RUSSELL NESBITT, CASSIE Bond# Posted:	Case Age: 911 Case Status: Filed 806-771-3933 806-767-1100 Type:	In Jail: NO Resets: 0 Status:
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#10

Monday, 04/04/2022 @ 9:00 AM 16 Not Guilty Jury Trial	Cause# 2020419467 Charge: ASSAULT DV STRANGLE Degree: 3rd Degree Felony Defense: Upd: 05/11/2020 State: Upd: 11/21/2019 Bond Info: Amt: \$10,000.00 Company: TRAMMEL'S LUBBOCK BAIL BOND	CLEVELAND, DENZAIL DAMONE (SO# 193699) Filed Date: 03/03/2020 Offense Date: 11/20/2019 MARTINEZ, VINCE WORKS, JUSTIN Bond# 7175566 Posted: 05/07/2020	Case Age: 715 Case Status: Filed 806-795-3411 806-775-1100 Type: Surety Bond	In Jail: NO Resets: 0 Status: Active; Inactive
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#10

Monday, 04/04/2022 @ 9:00 AM 17	Cause# 2020420433 Charge: FELON IN POSS OF FIREARM Degree: 3rd Degree Felony Defense: Upd: 05/11/2020 State: Upd: 05/08/2020	CLEVELAND, DENZAIL DAMONE (SO# 193699) Filed Date: 07/22/2020 Offense Date: 05/06/2020 MARTINEZ, VINCE WORKS, JUSTIN	Case Age: 574 Case Status: Filed 806-795-3411 806-775-1100	In Jail: NO Resets: 0
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Lubbock County District & County Courts-at-Law – Criminal Docket
140th District Court - Supplemental Jury Trial Docket
Monday, 04/04/2022 - 9:00 AM
Monday, 04/04/2022 - 5:00 PM

Not Guilty Jury Trial	Bond Info:	Amt: \$5,000.00	Bond# 7175558	Posted: 05/08/2020	Type: Surety Bond
		Company: TRAMMEL'S LUBBOCK BAIL BOND			Status: Active

#15

Monday, 04/04/2022 @ 9:00 AM 1 Not Guilty Jury Trial	Cause# 2020420716	ESCAMILLA, JOSE ANGEL (SO# 180847)			In Jail: NO
	Charge: PCS PG1 <1G	Filed Date: 08/11/2020			Case Age: 554
	Degree: State Jail Felony	Offense Date: 04/27/2020			Resets: 0
	Defense:	Upd: 08/26/2020	MARTINEZ, VINCE	806-795-3411	
	State:	Upd: 04/28/2020	NESBITT, CASSIE	806-767-1100	
	Bond Info:	Amt: \$3,000.00; \$5,000.00	Bond# 7176629; 2021-SB-01517	Posted: 04/29/2020; 10/25/2021	Type: Surety Bond; Surety Bond
	Company: COWBOY BAIL BONDS (LUBBOCK); TRAMMEL'S LUBBOCK BAIL BOND			Status: Active; Active	

#15

Monday, 04/04/2022 @ 9:00 AM 2 Not Guilty Jury Trial	Cause# 2020420801	ESCAMILLA, JOSE ANGEL (SO# 180847)			In Jail: NO
	Charge: THEFT \$2500<30K	Filed Date: 08/18/2020			Case Age: 547
	Degree: State Jail Felony	Offense Date: 04/28/2020			Resets: 0
	Defense:	Upd: 08/26/2020	MARTINEZ, VINCE	806-795-3411	
	State:	Upd: 05/12/2020	NESBITT, CASSIE	806-767-1100	
	Bond Info:	Amt: \$20,000.00; \$40,000.00	Bond# 7182691; 2021-SB-01516	Posted: 08/26/2020; 10/25/2021	Type: Surety Bond; Surety Bond
	Company: COWBOY BAIL BONDS (LUBBOCK); TRAMMEL'S LUBBOCK BAIL BOND			Status: Active; Active	

Automated Certificate of eService

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Lane Haygood
Bar No. 24066670
haygoodlawfirm@gmail.com
Envelope ID: 62654265
Status as of 3/16/2022 12:58 PM CST

Associated Case Party: Rodger Claycomb

Name	BarNumber	Email	TimestampSubmitted	Status
Lane Haygood	24066670	lhaygood@galyen.com	3/16/2022 10:30:22 AM	SENT

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Jeffrey Ford	24047280	jford@lubbockcda.com	3/16/2022 10:30:22 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Bennett		mb@ivi3.com	3/16/2022 10:30:22 AM	SENT

Automated Certificate of eService

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Mark Bennett
Bar No. 792970
mb@ivi3.com
Envelope ID: 64998739
Status as of 6/1/2022 11:58 AM CST

Associated Case Party: Nathan Sanders

Name	BarNumber	Email	TimestampSubmitted	Status
Lane AndrewHaygood		lane@haygoodlawfirm.com	5/31/2022 5:05:13 PM	SENT
Mark W. Bennett	792970	eservice@ivi3.com	5/31/2022 5:05:13 PM	SENT
Mark Bennett		mb@ivi3.com	5/31/2022 5:05:13 PM	SENT
Lane A.Haygood		lane@haygoodlawfirm.com	5/31/2022 5:05:13 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jeffrey Ford	24047280	JFord@lubbockcounty.gov	5/31/2022 5:05:13 PM	SENT
Stacey Soule	24031632	information@spa.texas.gov	5/31/2022 5:05:13 PM	SENT
Jeffery S.Ford		jford@lubbockcda.com	5/31/2022 5:05:13 PM	SENT

Associated Case Party: State Prosecuting Attorney

Name	BarNumber	Email	TimestampSubmitted	Status
John Messinger	24053705	john.messinger@spa.texas.gov	5/31/2022 5:05:13 PM	SENT